While applicant forecasts dramatic growth in retail customers through 1994, it assumes a static number of wholesale customers. Applicant provides no rationale to explain this disparity. Particularly, given the presumed benefits of improved reseller margins negotiated in the Settlement Agreement, it would seem reasonable that reseller business would increase in SVLP's service territory. Applicant should provide documentation supporting its assumptions concerning lack of growth in wholesale business despite improved margins.

4. Average Demand Per Customer

Given the extent to which customer growth outpaces plant expansion, it would appear at first glance that sheer customer growth could easily yield the needed contribution to net income to produce the 12.7% target return sought by applicant. Yet, while the number of customers is increasing, applicant assumes a significant drop in the level of average usage per retail customer.

Applicant's expected decline in average usage per customer more than offsets any earnings improvement realized from growth in numbers of customers served. Applicant's historical figures do indicate a downward trend in average usage per retail customer. For 1994, however, applicant assumes an acceleration in the rate of decrease in average retail usage beyond mere linear extrapolation of the 1990-92 historical trend. It is also unexplained as to why wholesale usage per customer is projected to remain static between 1992 and 1994 while retail usage dramatically declines.

Accordingly, applicant has not adequately justified its 1994 rate of decline in average usage. Applicant should provide any data which supports its estimated average per-customer usage for retail and wholesale service.

5. Gross Plant Investment

Another key assumption in applicant's 1994 return on investment projection is the level of investment. The applicant projects a dramatic change in the number of customers served relative to plant investment through 1994. Applicant projects a growth in gross plant investment from $68.2 million in 1992 to $103.3 million in 1994, an increase of 51%. Yet, applicant fails to provide details concerning the nature of the plant expenditures or what the current engineered serving capacity would be and how this relates to projected plant growth through 1994. This information should be provided. Applicant also should provide a breakdown of plant account elements making up its total 1994

investment of $103,320,000. The breakdown should correspond to the format used in Schedule 10 of applicant's annual financial reports filed with the Commission. Applicant should quantify what forecasting methodologies or indices were used for the various cost elements of 1994 investment.

6. Operating Expenses

The validity of applicant's return on investment projections for 1994 also depends on the reasonableness of the estimated operating expenses, depreciation, and taxes to be incurred during 1994. The application merely provides "pre-tax income" as the basis for its projected return on investment. In response to a subsequent ALJ data request for a breakdown of pre-tax income to include operating expenses, applicant provided a single total operating expense for each year. This single total is insufficient to determine the reasonableness of 1994 estimated expenses or the resulting return on investment. Applicant should provide a breakdown of 1994 operating expenses by account in a format corresponding to Schedule 9 of its annual financial report to the Commission, separately breaking out wholesale and retail operations. Likewise, projected 1994 operating income for wholesale and retail operations should be set forth corresponding to Schedule 7 of its annual financial report to the Commission. Applicant should explain the factor(s) used to estimate the various 1994 expenses. For example, were historical expenses extrapolated linearly? Were historical averages used? Was customer growth used? What inflation/deflation factors were assumed from 1992 to 1994, and from what source?

7. Depreciation Expense and Accumulated Depreciation

Applicant should justify its projected depreciation expense and accumulated depreciation in 1994. While gross plant investment grows about 186% ($36 million to $103 million) from 1990 to 1994, accumulated depreciation grows 671% ($5 million to $38.7 million). No explanation is given for the apparent disparity between these two. Applicant should indicate its average plant service lives for 1990-1994 and composite depreciation rate for each year. Applicant should justify its depreciable life assumptions and any significant changes in depreciation rates over the 1990-1994 period.

8. Gross Revenue Estimates

Applicant also fails to provide adequate documentation for its assumed percentage increases in rates for wholesale, retail, and roamer service respectively. Applicant proposes an array of billing plans which will result in different percentage

increases for individual customers depending on a number of variables. Yet, applicant fails to provide supporting calculations to test its assumptions that the rates proposed will produce the revenues projected. While applicant projects an 18% retail increase in computing a sample monthly bill, it estimates only a 12% increase in total retail revenue. Applicant should provide a calculation of estimated revenues showing how assumed usage is applied to proposed billing factors under the various service plans to arrive at the percentage increases.

9. Elimination of Monthly Feature Charge

Applicant has not justified its proposal to eliminate the monthly feature charge, and to bundle into general rates the cost of special features such as call waiting. Applicant's proposal would force all customers to pay for special features which only some use or want.

(END OF APPENDIX C)

APPENDIX C
Page 1

Deficiencies in Application
(Redacted Version)

Listed below are the areas of the application where deficiencies exist. We are directing the applicant to provide additional information, as noted, to permit a final decision on the merits of the application. Some of the referenced material below was provided confidentially to the ALJ under GO 66-C and not disclosed to other parties. Accordingly, an unredacted version of this appendix shall be provided confidentially only to applicant initially. A redacted version shall be issued separately omitting references to responses provided under GO 66-C. Applicant shall advise the ALJ in a timely manner as to whether any of Appendix C should remain confidential.

1. Return on Investment

The applicant has not justified that a return on investment as high as 12.7% should be funded through a rate increase, or that it reflects the true cost of capital for the partnership in 1994, considering its risk and potential for future profits. We direct SVLP to recast its proposed rate increase to assume a return on investment of 9.75% for 1994, the midpoint of the range we identify in our findings above.

2. Roamer Increases

Applicant has not justified that a roamer increase of 45% is justified given the rate of inflation and increase in costs of providing roamer service. We conclude that any increase in roamer rates should be limited to that granted for retail service. Applicant's showing should be revised accordingly.

3. Customer Growth

(Redacted Text -- See Formal File Copy for Unredacted Version)
Applicant should document what demographic, economic, and industry factors were used to estimate customer growth through 1994.

(Redacted Text -- See Formal File Copy for Unredacted Version)

4. Average Demand Per Customer

(Redacted Text -- See Formal File Copy for Unredacted Version)

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(END OF APPENDIX C)

APPENDIX D
CURRENT AUTHORIZED RETURNS

Company	Decision	ROR	ROE
ENERGY UTILITIES			
Sierra Pacific	93-12-022	9.18%	11.10%
Pacific Gas & Elec.	"	9.21	11.00
San Diego Gas & Elec.	"	9.03	10.85
SoCalGas	"	9.22	11.00
SoCal Edison	"	9.17	11.00
Southwest Gas	"	9.47	10.90
PacificCorp	"	9.13	10.85
LARGE TELEPHONE UTILITIES		**ROR**	
Pacific Bell	89-10-031	11.50% market ROR; 13.0% benchmark ROR. Earnings shared between 13.0% and 16.5%. Earnings floor of 8.25%. Earnings returned to ratepayers above 16.5%	
(ALJ decision of 3/7/94 proposes to remove shareable earnings, market ROR and benchmark ROR.)			
General Telephone	93-09-038	7.75%-15.5% ROR band. Earnings returned to ratepayers above 15.5%. No shareable earnings.	
MID-SIZED TELEPHONE UTILITIES		**ROR**	
Citizens	91-09-066	10.75%. No shareable earnings.	
Contel	"	"	"
Roseville	"	"	"
WATER UTILITIES	**Decision**	**ROR**	**ROE**
Class A			
Apple Valley Ranchos	93-02-012	11.31%	11.35%
Azusa Water	90-12-069	11.12	12.25
Cal-American	93-10-038	9.42	10.65
Cal-Water Serv.	93-08-033	10.14	11.00
Citizens Util.	93-04-027	9.80	11.25
Del Este Water	91-12-073	11.26	12.10
Dominguez Water	92-12-056	10.63	11.50
Great Oaks Water	93-04-061	10.56	11.50
Park Water	93-12-001	10.31	10.50
San Gabriel	93-09-036	10.39	11.10
San Jose Water	91-12-023	10.52	11.75
Santa Paula	92-04-031	11.55	11.75
SoCal Water	93-06-035	9.50	10.15
Suburban Water	93-01-006	9.59	11.00
Valencia Water	92-12-059	9.19	11.50
Class B			
Alco Water	CACD Memo 1/24/94	8.51	10.98
		ROR	
Class C	CACD Memo 4/1/93	11.05%-11.55%	
Class D	" "	13.35 -13.85	

(END OF APPENDIX D)

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Decision 94-04-043 April 6, 1994

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation of the Commission's own motion into the regulation of cellular radiotelephone utilities.	I.88-11-040 (Petition to Modify Decision 90-06-025 Filed July 12, 1993)
And Related Matter.	Application 87-02-017 (Filed February 6, 1987)

ORDER MODIFYING DECISION 90-06-025

1. Background

By Decision (D.) 93-04-058, we modified the Phase II Cellular Decision (D.90-06-025, 1990 36 Cal.P.U.C.2d 464) with the establishment of "Rate Band Pricing Guidelines" to simplify the existing cellular regulatory framework and to provide the cellular industry an opportunity to demonstrate that price competition does exist in California.

Consistent with these goals, President Fessler issued an Assigned Commissioner's Ruling (Ruling) on December 2, 1993 proposing additional modifications to the Phase II Decision. These modifications were proposed to reduce perceived regulatory barriers associated with the Phase II Decision and General Order (GO) 96-A; streamline the advice letter process; provide consumers with information necessary to make informed decisions; eliminate potential customer abuse and discrimination for automatically renewable contract tariffs; and most importantly, facilitate pricing flexibility to encourage price competition. All appearances of record and other interested parties were invited to comment on proposed modifications of the Phase II Decision pertaining to:

a. Temporary tariff authority.
b. Provisional tariff process.
c. Cellular gift rule.

d. Withdrawal of optional plans.
e. Users' informational booklet.
f. Automatic contract renewals.

Comments and reply comments were received from several interested parties including Bay Area Cellular Telephone Company (BACTC), Cellular Carriers Association of California, Inc. (CCAC), Cellular Resellers Association, Inc. (CRA), GTE Mobilnet of California Limited Partnership and GTE Mobilnet of Santa Barbara Limited Partnership, Cellular Users, Los Angeles Cellular Telephone Company (LA Cellular), McCaw Communications, Inc. (McCaw), PacTel Cellular (PacTel) and its affiliates Los Angeles SMSA Limited Partnership and Sacramento-Valley Limited Partnership, Nextel Communications, Inc., and US West Cellular of California, Inc. Comments were also received from Cellular Users and Utility Consumers' Action Network (UCAN).

Although parties were directed by the Ruling not to argue to broaden the Ruling's scope or to propose additional flexibility, several parties did so in their comments. Such comments, to the extent that they exist, were not responsive to the Ruling and, accordingly, not considered. The modifications considered and adopted by this order are subject to further Commission action on the limited rehearing of D.92-10-026, the rehearing of Ordering Paragraph 9 of D.92-04-081, the hearing on the LA Cellular petition to modify the Phase II Decision, and resolution of the Commission's investigation into mobile telephone service and wireless communications (Investigation 93-12-007).

2. Temporary Tariff Authority

The Phase II Decision provided cellular carriers an option to file temporary tariffs instead of availing themselves of the traditional 30-day effective date advice letter process for rate decreases. Under this temporary tariff procedure, as modified by D.90-10-047, any tariff filing not decreasing a cellular carrier's average customer bill by more than 10% is

effective on the date filed. Multiple 10% reductions during any calendar year are permissible.

However, upon the filing of a protest, the temporary tariff remains temporary until the protest has been resolved by order of the Commission, or, if within six months of the filing of the temporary tariff no resolution takes place and the Commission does not act, the protest is deemed denied and the tariff is classified as a permanent tariff. In addition, temporary tariff filings must be renewed yearly by filing a 40-day effective date advice letter with updated calculations.

Since the issuance of the Phase II Decision, experience has shown that the temporary tariff process has become routine and noncontroversial. Further, with the issuance of the cellular rate band guidelines (Guidelines) in D.93-04-058, the advice letter filing and the 10% limit no longer serve a useful purpose because the Guidelines permit downward pricing flexibility on one-day's notice. Given these facts, President Fessler proposed to eliminate the 10% reduction limit and the renewable filing requirement.

Comments received from interested parties, except for CRA, supported eliminating the current 10% restriction and the annual renewal of temporary tariff filings. CRA proposed that the temporary tariff authority be abolished because it believes that such authority is irrelevant and unnecessary due our implementation of the Guidelines.

However, the Guidelines, useful as they are, are restricted to unconditional rate reductions for all subscribers. The Guidelines are explicitly not available for short-term, conditional discounts, and credits characterized by many temporary tariffs, nor may the Guidelines be utilized for discounts, or free service offerings to new subscribers or to existing subscribers who agree to an extended term of service. These excluded services, under existing procedures, must be filed 30 days prior to being effective. Therefore, CRA's proposal would, among other things,

stifle downward pricing flexibility for new service tariffs and new subscribers.

PacTel has recommended a clarification to the proposed change. PacTel suggested that "new service plans" be specifically identified in the temporary tariff procedure so that new customers need not wait at least 30 days, pursuant to today's rules, to take advantage of new service plans and that competitors not receive advance notice of cellular carriers' new service plans.

CRA opposed PacTel's proposal clarification on the basis that PacTel's proposal violates existing temporary tariff procedures and violates the Guidelines designed solely for existing rate plan rate reductions. CRA is correct. However, as stated in the Ruling, we are considering flexible modifications to the existing temporary tariff procedures. An extension of the temporary tariff procedure to include new tariff services is consistent with our goal to provide the cellular industry an opportunity to demonstrate that price competition does exist in California and to enable new cellular subscribers to receive immediate benefits from the introduction of lower service rates, so long as the wholesale-retail margin is preserved. However, in view of the fact that some carrier promotion last only a few days, we will require carriers to fax to the resellers copies of the proposed promotional tariff 24 hours prior to filing if the duration of the promotion is 10 or fewer days.

Upon consideration of all the comments and reply comments, we conclude that Ordering Paragraph 8(b) of the Phase II Decision, modified by D.90-10-047, should be further modified to read:

> 8(b). A cellular carrier's or reseller's rate reduction tariff filing, including reductions in new service plans, as long as the wholesale-retail margin is maintained, shall be classified as a temporary tariff and made effective on the date filed. The temporary tariff process shall also be applicable to

advice letter filings not imparting any price changes, more restrictive terms, and conditions or margin changes. For promotions lasting for 10 or fewer days, carriers must deliver to the resellers via facsimile, copies of the proposed promotional tariff 24 hours prior to filing their advice letter.

3. Provisional Cellular Tariff Process

There has been a great deal of confusion within the cellular industry on the difference between a provisional and a promotional tariff. A provisional tariff is defined as a new plan or service set to expire on a specified date, while a promotional tariff is defined as a discount to rates in an existing tariff plan. The distinction between the two tariffs is that subscribers of a provisional tariff must sign up for a different plan, default to a carrier's selected service, or lose service upon expiration of the tariff; whereas, subscribers of a promotional tariff remain on the same tariff plan after the rate discount expires.

As explained in the Ruling, cellular carriers never received authority to file provisional tariffs under temporary tariff[1] authority or without pre-approval of the Commission. This has been because provisional tariffs have always required pre-approval pursuant to GO 96-A.

Although provisional tariffs were never intended to be used for promotional purposes, such tariffs have been used by cellular carriers to gather marketing information, to obtain service cost data for the establishment of permanent tariff rates, and to determine the acceptability of service to the subscribers' needs.

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1 Temporary tariffs become effective on the date filed.

To eliminate the fine line between provisional and promotional tariffs, President Fessler proposed to balance these tariffs by eliminating the provisional tariff pre-approval requirement as long as safeguards are put into place to protect the subscribers of provisional tariff services.

There was no opposition to eliminating the pre-approval requirement. However, there were several proposals to modify subscriber safeguards. Except for CRA's recommendation to notify resellers, and UCAN's recommendation requiring carriers to provide written notice to subscribers between 30 and 60 days prior to the expiration date of the provisional tariff, no modification to subscriber safeguards proposed by the Ruling will be adopted.

Therefore, the provisional tariff pre-approval requirement should be eliminated as long as cellular carriers submit to the Commission's Public Advisor's Office for its approval prior to being provided to subscribers and resellers (prior to actually subscribing to the provisional tariff service and again 45 days prior to expiration of the provisional service), a written notice which clearly and explicitly indicates the date the provisional tariff is scheduled to expire; and, the default options available to the subscriber.

4. Cellular Gift Rule

The Phase II Decision restricted cellular carriers from providing, either directly or indirectly, any gift of any article or service of more than nominal value ($25 for gifts and $100 for service) to any subscriber or potential subscriber as a condition of obtaining cellular service unless the cellular carriers received such authorization through the advice letter process.

To provide the cellular industry additional promotional pricing flexibility and to eliminate the burdensome task of tracking and measuring a subscriber's usage to ensure that it remains within the $100 limit, the assigned Commissioner proposed to eliminate the monetary value of service ceiling in Ordering

Paragraph 16(b) of the Phase II Order as modified by Ordering Paragraphs 16(c) and 6(b) of D.90-06-025 and D.92-02-076, respectively, as long as it is tariffed (can be filed under temporary tariff authority) and the margin between wholesale and retail is protected.

UCAN has some reservations about the removal of the $100 service ceiling for promotional gifts because of its concern that carriers may use gifts to circumvent or depress consumer interest in price comparisons. UCAN did acknowledge that gifts do offer some value. However, it believes that the only effective way of fostering true competition between carriers is for consumers to concentrate on comparison rate shopping. Given its reservations, UCAN does endorse the proposal to remove the $100 service ceiling as long as such gifts are subject to full tariff authority, a showing is made to demonstrate that the margin is protected, and that the temporary tariff authority not be used for such gifts.

Cellular Users opposed the continuation of carriers providing any gifts to entice customers on the basis that it is an unnecessary anachronism. It believes that gifts can, have, and will continue to be used to subsidize equipment costs, thereby expanding the ability of the essentially unregulated to tease customers into obtaining cellular service by offering gifts. It concludes that the only appropriate customer incentive is rate competition between the duopoly carriers.

CRA concurred with the proposed change to the gift rule as long as it was clarified that the full credit being passed through to subscribers be provided equally to cellular resellers. In other words, if a cellular carrier rebates a $200 service credit to a subscriber, the full $200 service credit would also be rebated to the reseller.

Several parties opposed CRA's recommended clarification because it runs counter to the wholesale-retail mandatory margin rules. This mandatory margin rule requires that if a $200 service

credit is granted to a retail customer, the reseller is entitled to a discount equal to $200 multiplied by the ratio of the reseller's wholesale rates to the carrier's retail rates, no more and no less.

CRA's proposed clarification would require modifying the established wholesale-retail margin, an issue beyond the scope of the Ruling. Therefore, consistent with the Ruling's warning to not broaden the scope of the issues before us, CRA's proposed clarification should be rejected.

5. Withdrawal of Optional Plans

President Fessler also proposed to allow cellular carriers flexibility in withdrawing nonbasic service[2] plans (excluding roaming service) without obtaining Commission authority, currently required by GO 96-A. The grant of this additional flexibility is intended to provide an incentive for cellular providers to introduce innovative plans.

In return for such flexibility, the Commission would require cellular carriers to provide notice and to grandfather wholesale numbers of existing plans and retail subscribers for a one-year period following the effective date of a 30-day advice letter filing.

The parties commenting on this issue supported the option to withdraw service plans without prior Commission authority. However, there were several comments on the need to clarify the option and on the grandfathered time period.

McCaw raised a valid point in requesting that upon a cellular carrier's filing to withdraw a plan, the cellular carrier should be allowed to immediately cease offering the plan being discontinued to new subscribers. Absent such clarification, new subscribers may select a service plan scheduled to be eliminated in

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2 Basic service should be defined as monthly cellular service.

the very near future. Although grandfathered, it would still require new subscribers to again consider and weigh alternate cellular plans within a short time period. This clarification is in the best interest of new subscribers and should be adopted.

Although parties have not disputed that subscribers need advance notice of discontinued plans, they do dispute what constitutes reasonable notice. CRA has contended that additional time is needed for resellers to assess their options and to adequately notice their own subscribers. Specifically, CRA proposed a 30-day extension to the 30-day notice period with clarification that the term "wholesale numbers" being grandfathered clearly means resellers' wholesale numbers. The proposal being considered already provides for retail subscribers' (including resellers) wholesale numbers to be grandfathered. Therefore, CRA's later clarification request is moot.

CRA has failed to substantiate a need for the 30 additional days and no party has demonstrated that resellers would be harmed by this proposal. Thirty-day's notice has previously been deemed adequate notice to a reseller of a carrier's proposed introduction of a service plan or rate offering. Therefore, it is reasonable to apply the same notice period to an optional plan being withdrawn. Therefore, we will not adopt CRA's proposal to increase the advance notice by 30 days.

However, in consideration of CRA's safeguard concern, an additional clarification to subscriber safeguards proposed by PacTel should be adopted and made available to subscribers. This additional safeguard enables affected subscribers not selecting an alternate service plan within the grandfathered time period to be placed on the most economic plan for the subscriber, based on an analysis of the subscriber's usage. To be effective, this default provision should be specified in the carriers' and resellers' advice letters and tariff filings.

On the other side of the advance notice issue were the facilities-based carriers proposing to reduce the grandfather provision from one-year to 90 days following the effective date of filing. Respondents in favor of this shorter time period reasoned that service plans are normally discontinued because the plans are either outdated or fail to attract subscribers. To require cellular carriers to extend and manage such outdated and unpopular plans would be counter-productive and may result in subscribers forgetting that their plan is being discontinued.

Another reason provided for a shorter grandfather time period was that service providers want to introduce new plans designed to appeal to the same market segment. The longer the discontinued plan is required to be offered, the less incentive the facilities-based carriers have to introduce new innovative plans.

We concur with the carriers that the one-year proposed grandfather time period is excessive. However, the proposed 90-day time period may not provide subscribers sufficient time to select an alternate plan, particularly if the subscriber wants to compare alternate plans with a competing cellular carrier. Therefore, based on informed judgement, subscribers should be provided 120 days from the effective date to select an alternate plan or the default provision discussed above should prevail.

UCAN suggested that, as a subscriber safeguard, carriers again notify grandfathered subscribers of default options available to them 45 days prior to termination of the grandfather period.

Subscribers, upon proper initial notification, should take the initiative to consider alternate plans based on their perceived needs, whether with the same provider or competing provider, with due diligence. However, assuming the intended price flexibility is working, default options available to grandfathered subscribers 120 days prior to termination will not necessarily be the same default options available 75 days, or between 30 and 60

days prior to termination. Accordingly, UCAN's proposal should be adopted as a reasonable subscriber safeguard.

6. Users' Informational Booklet

An integral part of the Commission's cellular policy has been to reduce regulation as competitive marketplace forces are unleashed in the cellular arena. However, as a quid pro quo for relaxing regulation during the transition phases of cellular technology, it is important to educate consumers about the cellular options available to them. Accordingly, Commissioner Fessler requested comments on whether an "Important Information Booklet" (Booklet) on cellular service should be provided by cellular carriers to all consumers purchasing cellular service, under penalty of fines. The Commissioner further suggested that the Booklet be prepared through a workshop chaired by the Commission Advisory and Compliance Division.

The facilities-based carriers predominately opposed the establishment of a Booklet. This is because most, if not all of the facilities-based carriers already provide potential subscribers a detailed information package explaining their individual rate plans, service options, coverage areas, and future developments. These carriers don't believe that the Booklet would add to the service already being provided, especially in a constantly changing industry which varies from one cellular system to another.

However, CCAC proposed that the workshop be used to establish a consensus on the specific cellular information that should be made available to new customers. In turn, the facilities-based carriers could then examine their respective subscriber information packages, and, to the extent the information does not already appear in the respective carriers' material, add any such information in the respective carriers' material. CCAC concluded that such a procedure would result in substantially less effort and expense than publication of a standardized consumer Booklet that may duplicate much of the information already being

provided to subscribers. Such a workshop, if implemented, would not need Commission direction or oversight.

Although there were several suggestions as to what should be included in the Booklet, parties were unable to arrive at a consensus on the Booklet's scope and purpose. On the positive side, most of the parties agreed to participate in the workshop, if scheduled.

The facilities-based carriers and resellers, as entities operating in a competitive arena would naturally do, should inform and keep their subscribers and potential subscribers updated on cellular service as related to their respective service offerings. Although we will not schedule a Commission workshop at this time, the cellular industry, facilities-based carriers, and resellers alike, are strongly encouraged to voluntarily implement CCAC's workshop proposal.

7. Automatic Contract Renewals

Given the number of tariffed automatic contract renewals not in compliance with the Commission's rules and policies, as discussed in the Ruling, it was proposed that automatic contract renewal rules and policies be relaxed. In return for such consideration, cellular carriers would be required to correct their effective advice letters by implementing the following contract Guidelines:

a. Any early withdrawal penalties require signed agreements, using a sample contract form filed in the carrier's tariff.

b. No penalties assessed upon completion of the initial contract period.

c. Contract time period limited to a maximum of three years, including renewal periods.

d. Carriers notify subscriber 45 days prior to contract expiration date so that

subscribers may select an alternate plan. If subscribers don't select an alternate plan then the subscriber defaults to the carrier's basic plan.

e. Early termination penalties prorated over the contract life.

The merits of relaxed contract rules and policies was the area of greatest discussion and controversy among the parties. The controversy primarily involved the use of a "paperless" system and the subscribers' incentive to uphold the contract terms.

Some facilities-based carriers, such as BACTC, activate subscribers through a paperless system; therefore, they don't include a standard contract form with their contract rate plan tariff. In BACTC's situation, BACTC issues a welcome package to potential subscribers that reiterates the contract terms. Upon activation, BACTC continues to remind subscribers, on the face of each bill, that the subscriber has elected a contract plan subject to early termination charges based upon a breach of contract. Hence, it can be seen that BACTC's subscribers are being constantly reminded of their contract terms without the existence of written contracts.

Other facilities-based carriers planning on entering into the paperless environment concur with the proposed signed agreement as long as they will not be precluded from implementing their individual paperless system such as those already existing in the gas, electric, and local exchange telecommunications industries.

Parties also believed that any limiting and prorating of penalties would negate a subscriber's incentive to uphold the contract terms resulting in unilateral carrier contracts. Such a requirement would not only eliminate flexibility, the very issue the Commission proposes to encourage, but would ignore the reason contracts are offered. That is, to provide subscribers with discounts in order to reduce the carriers' subscriber churn rate,

or subscriber turnover rate. However, with limiting and prorating of penalties, carriers would be precluded from recapturing rate reductions extended to subscribers in exchange for term service commitments provided under contract. Absent such penalties, the subscribers would receive all of the benefits of a contract without bearing any risks, or responsibilities, of such a contract.

There were also opposing views on the contract term limit. One view holds that the three-year contract limit is too long because it restricts subscribers from taking advantage of different rate structures until the term of the contract expires, particularly in an industry experiencing rapid technological changes. The other view holds that the three-year contract limit is too short because valued subscribers retaining service for the contract duration would be precluded from receiving further advantage of a plan they may wish to continue using, and preclude additional rate flexibility for longer term contracts.

Of all the contract requirements being proposed, the 45-day notice requirement received the least opposition from the parties recommending variations to the 45-day notice requirement. However, the most notable proposal came from CCAC which proposed that subscribers be notified of the termination date upon commencement of service and that carriers be given flexibility to devise reasonable procedures for giving notice of plan expiration to subscribers, such as through bill inserts, or in a manner similar to subscription termination dates that often appear on magazine address labels. Consistent with this flexibility proposal, CCAC proposed that the subscribers' required default to the carrier's basic service plan be expanded to permit subscribers to be transferred to the most economical plan based on the subscribers' actual usage pattern.

Upon consideration and review of the automatic renewal contract, comments, and reply comments, we are convinced, more than ever, that the proposed Guidelines for consumer protection are in

the best interest of carriers and subscribers alike, and should be adopted by this order. Although these Guidelines may appear to be more restrictive on the surface, that is actually not the case. Carriers are free to exercise individual flexibility to obtain written confirmation on standard contracts with early withdrawal clauses (which may be a short confirmation from the subscriber that the subscriber is aware of any prepayment penalty), have freedom to design individual contract plans within the parameters of the contract Guidelines being adopted, and flexibility to devise reasonable procedures for notifying subscribers of any contract plan expiration date 45 days prior to the expiration date.

The only modification being made to the proposed Guidelines identified in the Ruling should be to require carriers to default subscribers not selecting an alternate plan by the contract expiration date to the carrier's most economic plan based on the subscriber's actual usage pattern.

Findings of Fact

1. The assigned commissioner to this investigation issued a Ruling seeking comments on specific proposals to provide price flexibility and to encourage price competition within the cellular market.

2. All parties of record were served a copy of the Ruling and are invited to comment on the specific proposals to provide price flexibility and to encourage price competition within the cellular market.

3. Comments received from interested parties supported a majority of the proposals set forth in the Ruling.

4. All comments and reply comments received from interested parties were considered in implementing the cellular flexibility adopted in this order.

Conclusions of Law

1. D.90-06-025 should be modified to the extent provided below.

2. Because of the public interest in competitive cellular service, this order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. Ordering Paragraph 8(b) of Decision (D.) 90-06-025 modified by D.90-10-047 shall be further modified as follows:

> 8(b). A cellular carrier's or reseller's rate reduction tariff filing, including reductions in new service plans, as long as the wholesale-retail margin is maintained, shall be classified as a temporary tariff and made effective on the date filed. The temporary tariff process shall also be applicable to advice letter filings not imparting any price changes, more restrictive terms, and conditions or margin changes. For promotions lasting for 10 or fewer days, carriers shall deliver to the resellers via facsimile, copies of the proposed promotional tariff 24 hours prior to the filing of their advice letter.

2. Provisional tariffs shall not be pre-approved by the Commission. However, as a condition of the no pre-approval process, the cellular carriers shall provide subscribers and resellers prior to actually subscribing to the provisional tariff service and again between 30 and 60 days prior to expiration of the provisional service, a written notice which clearly and explicitly indicates the date the provisional tariff is scheduled to expire; and the default options available to the subscriber. Such written notice shall be submitted to the Commission's Public Advisor's Office for approval prior to being provided to subscribers and resellers.

3. Ordering Paragraphs 16(b) and 16(c) of D.90-06-025 modified by Ordering Paragraphs 2(j) and 2(k) of D.90-10-047 and by Ordering Paragraph 6(b) of D.92-02-076 shall be further modified as follows:

> 16(b) No provider of cellular telephone service may provide, either directly or indirectly, any gift of any article of more than a retail value of $25 (e.g., permitted gifts could be pens, key chains, maps, and calendars with a retail value under $25) to any customer or potential customer in connection with the provision of cellular telephone service.
>
> 16(c) No provider of cellular telephone service may provide, cause to be provided, or permit any agent or dealer or other person or entity subject to its control to provide to any customer or potential customer, any gift of any article of more than a retail value of $25 which is paid for or financed in whole or in part by the service provider and which is offered on the condition, that such customer or potential customer subscribes to the provider's cellular telephone service.

4. Cellular carriers shall be authorized to withdraw optional (nonbasic) service plans, excluding roaming, without Commission approval, and to cease offering a plan being discontinued to new subscribers upon a cellular carrier's filing to withdraw the plan. However, cellular carriers shall be required to:

> a. Grandfather existing wholesale numbers on grandfathered plans.
>
> b. Provide written notice to subscribers and resellers of default options available to them 120 days following the effective date of a 30-day advice letter filing grandfathering the service to existing subscribers, and again between 30 and 60 days prior to expiration of the grandfathered tariff.